

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

WILLIAM E. SMITH, on behalf of himself )  
and all others similarly situated, )  
Plaintiff, ) 2:07-cv-681  
v. )  
LIFE INVESTORS INSURANCE )  
COMPANY OF AMERICA, )  
Defendant. )

## **MEMORANDUM ORDER**

Pending before the Court is DEFENDANT LIFE INVESTORS' MOTION TO DISMISS THE AMENDED CLASS ACTION COMPLAINT (Document No. 10). The matter has been thoroughly briefed (Document Nos. 11, 19, 21) and in addition, Plaintiff's counsel has submitted a letter to chambers dated October 23, 2007, to inform the Court of the recent decision in *Ward v. Dixie National Life Ins. Co.*, 2007 WL 2914954 (4<sup>th</sup> Cir. Oct. 5, 2007).

The key issue in this case is the meaning of the term “actual charges” in the supplemental cancer insurance policy provided by Defendant. Defendant contends, in essence, that the term is unambiguous as a matter of law, that its interpretation is correct, and therefore, that all of Plaintiff’s claims should be dismissed. Plaintiff contends that, at a minimum, the term is ambiguous and should be construed against the insurer.

The opinion of the Court of Appeals for the Fourth Circuit in *Ward* constitutes only persuasive authority. However, the Court notes that Defendant repeatedly cited the opinion by the District Court for the District of South Carolina in *Ward*, and that the Fourth Circuit vacated the district court's grant of summary judgment in favor of the insurance company.

It is clear that the matter in dispute is a close call, with legal support for each position. This Court does not, in this opinion, determine whether or not the term "actual charges" is ambiguous. However, the Court concludes that the issue merits the more fully-developed record that will be available after discovery and summary judgment briefing (if appropriate). Accordingly, DEFENDANT LIFE INVESTORS' MOTION TO DISMISS THE AMENDED CLASS ACTION COMPLAINT (Document No. 10) is **DENIED**. Defendant shall file an Answer on or before November 12, 2007.

SO ORDERED this 31<sup>st</sup> day of October, 2007.

BY THE COURT:

s/ Terrence F. McVerry  
United States District Court Judge

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